

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JERRY W. MOORE,

Plaintiff,

v.

21-CV-1160-LJV
ORDER

NIAGARA FRONTIER
TRANSPORTATION AUTHORITY, INC.,
et al.,

Defendants.

The *pro se* plaintiff, Jerry W. Moore, has filed a complaint asserting claims under the Americans with Disabilities Act of 1990 (“ADA”) and the New York State Human Rights Law (“NYSHRL”) against Niagara Frontier Transportation Authority, Inc. (“NFTA”); Kimberley Minkel, the executive director of NFTA; Tamara Turner, an employee of NFTA; and Patricia Riseman, a systems manager at NFTA. Docket Item 1. He also has moved to proceed *in forma pauperis* (that is, as a person who should have the prepayment of the ordinary filing fee waived because he cannot afford it) and has filed the required affidavit. Docket Item 2.

Because Moore meets the statutory requirements to proceed *in forma pauperis* under 28 U.S.C. § 1915(e)(2), his motion is granted.¹ Moreover, Moore’s complaint

¹ Moore also has asked this Court to order the United States Marshals Service (“Marshals”) to effect service on the named defendants under Rule 4(c)(3) of the Federal Rules of Civil Procedure. Docket Item 3. Under 28 U.S.C. § 1915(c), “[t]he officers of the court shall issue and serve all process” in cases where an individual is authorized to proceed *in forma pauperis*. Because the Court grants Moore *in forma pauperis* status, it also orders the Marshals to serve the named defendants. Moore’s motion for service, Docket Item 3, therefore is denied as moot.

presents “colorable claim[s]” and therefore survives screening under 28 U.S.C. § 1915(e)(2). *See Benitez v. Wolff*, 907 F.2d 1293, 1295 (2d Cir. 1990) (“*Sua sponte* dismissal of a *pro se* complaint prior to service of process is a draconian device which is warranted only when the complaint lacks an arguable basis either in law or in fact [or is] frivolous on its face or wholly insubstantial.” (citations omitted)); *see also Pino v. Ryan*, 49 F.3d 51, 53 (2d Cir. 1995) (explaining that dismissal under Federal Rule of Civil Procedure Rule 12(b)(6) still may be appropriate notwithstanding a court’s earlier finding that the complaint was not “frivolous” for purposes of section 1915(e)(2)).

ORDER

In light of the above, IT IS HEREBY
ORDERED that Moore’s motion to proceed *in forma pauperis*, Docket Item 2, is
GRANTED; and it is further
ORDERED that the Clerk of Court shall file Moore’s papers and cause the United
States Marshals Service to serve copies of the summons, complaint, and this order
upon the named defendants without Moore’s payment therefor, unpaid fees to be
recoverable if this action terminates by monetary award in the plaintiff’s favor; and it is
further

ORDERED that Moore must effect service within 90 days of the date the
summons is issued. It is Moore’s responsibility to inquire of the Marshals at 716-348-
5300 as to whether service has been made and, if necessary, to request an extension
of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012). If, within 90
days of issuance of the summons, Moore has not effected service or requested an
extension of time in which to do so, the Court may dismiss this action for failure to

prosecute under Rules 4(m) and 41(b) of the Federal Rules of Civil Procedure;² and it is further

ORDERED that Moore's motion for service, Docket Item 3, is denied as moot; and it is further

ORDERED that Moore shall notify the Court in writing if his address changes.

The Court may dismiss the action if Moore fails to do so.

SO ORDERED.

Dated: April 7, 2022
Buffalo, New York

/s/ *Lawrence J. Vilardo*
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

² The plaintiff is advised that he may be eligible for help in effecting service and other matters from the Pro Se Assistance Program, a joint project staffed by the University at Buffalo School of Law and the Erie County Bar Association Volunteer Lawyers Project. The program can be reached by calling 716-847-0662, ext. 340, and leaving a message. Additional information is available at <https://www.nywd.uscourts.gov/pro-se-assistance-program-0>.